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EXECUTIVE SECRETARY

May 13, 2010

Mr. Andrew McGilvray  
Executive Secretary  
Foreign-Trade Zones Board  
U.S. Department of Commerce  
Room 2111  
1401 Constitution Avenue, NW  
Washington, DC 20230

Dear Mr. McGilvray:

In response to the invitation for public comment published by the Foreign-Trade Zones Board ("FTZ Board"),<sup>1</sup> the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") submits these comments on the preliminary recommendation of the FTZ Board staff regarding the ThyssenKrupp Steel and Stainless USA, LLC ("ThyssenKrupp") application for subzone authority. The USW greatly appreciates this opportunity to submit comments in this matter to assist the Board in rendering a final decision.

The USW is the largest industrial union in North America and represents workers across a broad swath of the nation's manufacturing base. Relevant to this matter, USW members work for domestic steel producers and raw material suppliers who would be adversely affected by the proposed subzone in Calvert, Alabama if it were to be approved without restriction.

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<sup>1</sup> *Foreign-Trade Zone 82; Application for Subzone Authority; ThyssenKrupp Steel and Stainless USA, LLC; Invitation for Public Comment on Preliminary Recommendation*, 75 Fed. Reg. 17,692 (April 7, 2010).

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United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

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In the preliminary recommendation, the FTZ Board staff correctly recognized that full approval of the ThyssenKrupp application would have a negative impact on competing domestic steel producers and raw material suppliers, along with their workers, many of whom are USW members. The USW is, therefore, generally supportive of the preliminary recommendation to restrict the subzone approval. Simply limiting FTZ benefits to production for export, however, would not adequately address the adverse impact of the subzone on domestic steel producers and raw material suppliers – and thus on workers, including USW members at those companies.

In particular, the USW believes that additional measures need to be imposed to ensure that if restricted subzone status is granted that status cannot be used in a manner that would avoid the payment of antidumping and countervailing duties on imports into the subzone that are incorporated into steel products destined for export. The FTZ Board should not permit the subzone to be used to undermine existing (or future) antidumping and countervailing duty orders.

Allowing ThyssenKrupp to use dumped or subsidized steel products (such as stainless steel hot bands) and raw materials to produce exported merchandise without paying antidumping or countervailing duties would undermine antidumping and CVD orders protecting steel producers, raw material suppliers, and their workers. With respect to raw materials, allowing ThyssenKrupp to use unfairly traded inputs to produce exported products would undercut domestic prices – placing domestic suppliers at a competitive disadvantage and causing them to lose sales. The negative effect on domestic suppliers and their workers essentially would be no different than when products made with dumped or subsidized inputs are consumed domestically. When sales are lost, they are lost regardless; domestic production is curtailed, and workers ultimately pay the price by suffering layoffs and job losses.

The USW understands that ThyssenKrupp has said repeatedly in its testimony and written comments that it either would not enter merchandise under antidumping or countervailing duty

orders into the proposed subzone or is not presently contemplating doing so. If, however, subzone status were to be granted, there would be no way to ensure, in fact, that would not occur when imports covered by orders are incorporated into steel products destined for export, *unless* an effective means of monitoring is put in place, so that at no time in the future would ThyssenKrupp use the benefit of restricted zone status to avoid paying antidumping or countervailing duties on such imports.<sup>2</sup>

The USW believes that this important objective could be achieved readily and with minimal burden by an annual certification<sup>3</sup> from ThyssenKrupp to the FTZ Board, in which the company would be required to certify that in the previous calendar year it did not bring merchandise subject to antidumping or countervailing duty orders into the subzone for incorporation into goods for export or, if it did so, the company deposited and paid the antidumping and/or countervailing duties on the merchandise (and, in the latter circumstance, lists the goods upon which such duties were paid).<sup>4</sup>

If the FTZ Board ultimately decides to grant ThyssenKrupp restricted subzone status for its Calvert, Alabama operations in some measure with regard to exports, that privilege should come with this eminently reasonable obligation on the part of the company to comply with a simple annual certification, which can provide reasonable assurances that U.S. trade laws are not being undermined by a restricted subzone grant. Such oversight would comport with the Board's

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<sup>2</sup> For instance, carbon and stainless steel flat products, including products manufactured by ThyssenKrupp affiliates in Europe that are subject to antidumping orders in the United States, could be finished at the Calvert, Alabama facility and exported. In addition, ThyssenKrupp could enter raw materials into the subzone, such as silicomanganese and ferrovanadium, which also are subject to antidumping orders, and use those imports to produce steel for export.

<sup>3</sup> This certification should be subject to the False Claims Act, 18 U.S.C. 1001 and should be publicly available at the FTZ Board for a minimum of five years.

<sup>4</sup> The Board's regulations already require antidumping and countervailing duties to be paid on imports entered into the subzone and used to produce goods destined for consumption in the United States. 15 C.F.R. § 400.33(b)(2).

stated policy that FTZs shall not be used to circumvent antidumping or countervailing duty actions.<sup>5</sup>

Additionally, ThyssenKrupp has told the Board that it intends to export ten percent of the carbon steel products manufactured at the Calvert, Alabama facility and 27 percent of the stainless steel products manufactured there.<sup>6</sup> ThyssenKrupp has not said where those exported products ultimately will be consumed. These facts raise the concern that ThyssenKrupp could obtain FTZ benefits on the exported products and later re-export them back to the United States.

The negative impacts of such re-exports on other domestic steel producers, raw material suppliers, and their workers in that circumstance would be no different than the negative impacts (which the preliminary recommendation recognizes) of steel products sold directly from the Calvert facility into the U.S. market. To avoid such negative impacts, the USW believes that the Board should make clear as part of the restriction on the subzone that ThyssenKrupp would be eligible to receive FTZ benefits *only* with respect to carbon and stainless steel products manufactured in the Calvert facility that are exported from the United States and do not re-enter the United States. Again, some form of annual monitoring by the Board would seem appropriate to ensure that this restriction is followed.

Sincerely



Linda Andros  
Legislative Counsel

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<sup>5</sup> 15 C.F.R. § 400.33(b)(1) (“*Board Policy*. Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.”).

<sup>6</sup> For example, Mr. Methenitis testified at the FTZ Board hearing that “ThyssenKrupp anticipates 27 percent of the stainless production in Alabama will be exported, and 10 percent of the carbon production in Alabama will be exported.” Hearing Transcript at 22.